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FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 03-05
DATE ACTIVATED: June 19, 2003

SENSITIVE

STATUTE OF LIMITATIONS: March 10, 2004¹

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10 **SOURCE:** AUDIT REFERRAL
11 **RESPONDENTS:** Friends of Weiner and Ira Spodek, as Treasurer
12 Rep. Anthony D. Weiner
13 Morton Weiner
14 Frances Weiner
15 Sari Kassin
16 Abraham Chehebar
17 Maya Cohen
18 Marty Hollander
19 Zachary Kerr
20 John Lerner
21 Jitendra Mehta
22
23 Lewis Pell
24 Leonard Schwartz

25 **RELEVANT STATUTES**
26 **AND REGULATIONS:** 2 U.S.C. § 434(a)(6)(A)
27 2 U.S.C. § 434(b)
28 2 U.S.C. § 441a(a)(1)(A)
29 2 U.S.C. § 441a(f)
30 2 U.S.C. § 431(8)
31 11 C.F.R. § 100.7(a)(1)
32 11 C.F.R. § 104.3(a)
33 11 C.F.R. § 104.3(d)
34 11 C.F.R. § 104.5(f)

¹ The earliest excessive contribution in this matter was made on March 10, 1999. Therefore, the earliest date on which the five-year limitations period would expire with respect to the excessive contributions is March 10, 2004. It should be noted, however, that the vast majority of the excessive contributions were made in the second half of 1999 and 2000. Consequently, the statute of limitations for most of these violations will not expire until late 2004 and 2005. The excessive loans at issue in this matter were made in August and September 1998 and the statute of limitations on enforcement on a civil penalty has expired with respect to them. The reporting violations at issue in this matter, which were recurring in nature, occurred between October 1998 and December 1999. Consequently, the statute of limitations for these violations will expire fully in December 2004. See 28 U.S.C. § 2462.

24.04.408.3569

1 11 C.F.R. § 110.1(b)
2 11 C.F.R. § 110.1(k)(3)(ii)
3 11 C.F.R. § 110.10(b)(2)
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5 **INTERNAL REPORTS CHECKED:** Audit Documents
6 Disclosure Reports

7 **FEDERAL AGENCIES CHECKED:** None

8 **I. INTRODUCTION**

9 This matter was generated by an audit of Friends of Weiner ("FOW"), which was
10 conducted by the Audit Division of the Federal Election Commission ("Commission")
11 pursuant to 2 U.S.C. § 438(b). The audit covered the period from January 1, 1999 to
12 December 31, 2000 ("Audit Period"). FOW is one of two authorized campaign
13 committees of Representative Anthony D. Weiner ("Candidate" or "Anthony Weiner"), a
14 member of the United States House of Representatives from New York's 9th
15 Congressional District.² According to its most recent financial report, which was filed on
16 May 21, 2003, FOW's current treasurer is Ira Spodek.

17 The Commission approved the Report of the Audit Division on Friends of Weiner
18 ("Final Audit Report") on April 22, 2003. Attachment 1 at 1. The audit revealed
19 apparent violations of the Federal Election Campaign Act of 1971, as amended ("the
20 Act").³ Specifically, the Final Audit Report included findings that FOW had:

² FOW initially registered with the Commission on May 28, 1997. A second authorized campaign committee for Anthony Weiner, Friends of Weiner '04, filed a statement of organization with the Commission on July 10, 2003. Ira Spodek also serves as the treasurer of Friends of Weiner '04.

³ All of the facts recounted in this report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

1 (1) accepted 183 contributions from individuals totaling \$212,801 in excess of the
2 limitations of the Act; (2) failed to file required 48-hour notifications for 32 contributions
3 totaling \$50,000; and (3) accepted loans totaling \$28,000, which constitute additional
4 excessive contributions under the Act. Attachment 1 at 1. These apparent violations
5 were referred to this Office on May 6, 2003, and are addressed in this First General
6 Counsel's Report ("Report").⁴

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 **A. Excessive Contributions from Individuals**

9 Based upon the analysis set forth in the audit referral, this Office recommends that
10 the Commission find reason to believe that FOW and Ira Spodek, as treasurer, violated
11 2 U.S.C. § 441a(f) by accepting contributions totaling \$212,801 in excess of the
12 limitations set forth in the Act.⁵

⁴ The excessive contributions and the 48-hour notification violations are relatively straightforward and a complete legal and factual analysis of the apparent violations is contained in the attached audit referral. Attachment 1. This Report thus addresses them in summary fashion. The third violation, regarding \$28,000 in excessive loans, is somewhat more complicated. Accordingly, this Office is providing a separate legal and factual analysis for it.

⁵ Of the 183 excessive contributions, 175 of them (totaling \$202,801) were for the primary election and eight of them (totaling \$10,000) were for the general election. According to the Audit Division, had the Commission's new rules for presumptive redesignation and reattribution of excessive contributions (*see infra* footnote 6) been in effect during the Audit Period, there would have been only \$33,250 in excessive contributions.

1 In this matter, the following contributors meet
2 this threshold and are, therefore, named as respondents in this Report:

NAME	NON-CURABLE EXCESSIVE AMOUNT
Sari Kassin	\$3,000 (General)
Abraham Chehebar	\$2,000 (Primary)
Maya Cohen	\$2,000 (Primary)
Marty Hollander	\$2,000 (Primary)
Zachary Kerr	\$1,500 (Primary)
John Lerner	\$2,000 (Primary)
Jitendra Mehta	\$1,750 (Primary)
Lewis Pell	\$2,000 (Primary)
Leonard Schwartz	\$1,500 (Primary)

3 Consistent with the Commission's handling of this Office
4 recommends that the Commission find reason to believe that the
5 contributors listed above violated 2 U.S.C. § 441a(a)(1)(A) by making excessive
6 contributions to FOW, but take no further action and close the file as to all of these
7 individual respondents except Abraham Chehebar

8 This Office recommends that the Commission pursue pre-probable cause
9 conciliation with Mr. Chehebar because he was a respondent in MURs 4935 and 5057
10 (Dear for Congress). In those MURs, which involved the 1998 election cycle, the

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1 Commission found reason to believe, and conciliated with Mr. Chehebar, regarding his
2 excessive contributions to Dear for Congress.

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1 **B. 48-Hour Notification Violations**

2 Based upon the legal and factual analysis set forth in the audit referral, this Office
3 recommends that the Commission find reason to believe that FOW and Ira Spodek, as
4 treasurer, violated 2 U.S.C. § 434(a)(6) by failing to file 48-hour notifications for 32
5 contributions totaling \$50,000. *See* Attachment 1 at 8-9.

6 **C. Excessive Loans**

7 A loan made by any person for the purpose of influencing any election for federal
8 office is a contribution. 2 U.S.C. § 431(8). The aggregate amount loaned to a candidate
9 or a committee by a contributor, when added to other contributions from that individual
10 to that candidate or committee, shall not exceed the contribution limitations set forth in
11 the Act. 11 C.F.R. § 100.7(a)(1)(i)(B). A loan, to the extent it is repaid, is no longer a
12 contribution. *Id.* A loan that exceeds the contribution limitations set forth in the Act is
13 unlawful whether or not it is repaid. 11 C.F.R. § 100.7(a)(1)(i)(A). A committee must
14 report the identity of an individual from whom it receives a contribution where the
15 contribution, when aggregated with other contributions made during the reporting period,
16 totals more than \$200. 2 U.S.C. § 434(b). In addition, in its reports, a committee must
17 itemize loans it receives and provide the identity of the lender. *Id.* Finally, a committee
18 must report the amount and nature of its outstanding debts and obligations. *Id.*

19 The Audit Division discovered that during the Audit Period, FOW repaid a
20 \$28,000 loan that it claimed it received from Anthony Weiner in September 1998.⁸ In

⁸ The loan was reported by FOW to have been made by Anthony Weiner in two payments – a \$20,000 payments on September 4, 1998 and an \$8,000 payment on September 10, 1998. FOW repaid \$10,000 to Anthony Weiner at the end of 1998 and repaid the remaining \$18,000 in 1999. The final repayment was made on October 15, 1999. Thus, although the loans were made prior to the Audit Period, the Audit Division discovered them because FOW repaid them, in part, during the Audit Period.

1 reports it filed with the Commission between October 1998 and January 2000, FOW
2 reported the \$28,000 as a loan from Anthony Weiner. The money was received just days
3 before the September 15, 1998 New York primary election, Attachment 1 at 6, and
4 appears to have provided FOW with a large amount of money at a particularly critical
5 time in Anthony Weiner's campaign for Congress.

6 Anthony Weiner won the September 15, 1998 Democratic primary election with
7 29% of the vote in a close four-way race. He won the 1998 general election by a
8 substantial margin with 66% of the vote. FOW's disbursement reports show that in the
9 days before the primary (between September 4 and 15, 1998) it spent over \$44,500, with
10 the largest payments going to Direct Response, a direct mail vendor, and Calling Services
11 Corp., which appears to be a telemarketing firm. The \$28,000 infusion nominally from
12 Anthony Weiner represented approximately 63% of the \$44,500 FOW spent in the days
13 before the primary election.

14 When it discovered the loan repayments, the Audit Division requested that FOW
15 produce records sufficient to determine whether the loan was made from Anthony
16 Weiner's personal funds. Counsel for FOW claimed that no loan documents existed and
17 refused to produce the requested bank records on the grounds that the loan fell outside the
18 Audit Period. The Commission issued a subpoena to FOW requesting production of the
19 documents and a subpoena to Anthony Weiner to identify the source of the funds used to
20 make the loan.

21 While the subpoena request was pending, counsel for FOW produced statements
22 from Anthony Weiner's bank account at the Municipal Credit Union ("MCU") for the
23 months of September and October 1998 and a copy of one of the loan proceed checks

1 from his MCU account payable to FOW in the amount of \$20,000. In a letter
2 accompanying the production, counsel for FOW stated that Anthony Weiner had no other
3 bank accounts and did not have a copy of the other loan proceeds check (i.e., for the other
4 \$8,000 loaned to FOW). Counsel explained that Anthony Weiner did not have a copy of
5 his account statement for August 1998 and that, due to a computer malfunction, MCU
6 was unable to retrieve a copy of the August 1998 statement.⁹

7 The MCU statements for September and October 1998 revealed that on
8 September 2, 1998, just prior to making the loan to FOW, Anthony Weiner deposited
9 \$5,000 into the account, bringing the balance to \$32,222. By September 10, 1998, he had
10 transferred \$28,000 of this amount to FOW. This account activity raised further
11 questions as to the source of the funds used to make the loan. Specifically, the auditors
12 sought to discover the source of the September 2, 1998 \$5,000 deposit, as well as the
13 source of the other \$27,222 that was in the account at the time the loan was made.

14 Anthony Weiner finally responded to his subpoena by stating, "the funds I used to
15 make loans to Friends of Weiner, totaling \$28,000, in September 1998 were funds in my
16 personal bank account at the Municipal Credit Union." Attachment 1 at 6. He also stated
17 that he recalled that, at that time, he deposited into that account \$10,000 he received from
18 his father and over \$2,500 he received from his mother.

19 The Commission then issued a subpoena to MCU, requesting the production of
20 documents sufficient to identify all items in excess of \$2,000 deposited into Anthony
21 Weiner's account from July through August 1998. The subpoena also directed MCU to
22 provide documentation to identify the source of the \$5,000 deposit into the account on

⁹ A letter from an MCU officer confirming the computer malfunction was included.

1 September 2, 1998. On September 16, 2002, MCU produced copies of the following four
2 checks, totaling \$30,000, which were deposited into Anthony Weiner's account in August
3 1998:

- 4 (1) a \$15,000 check dated August 3, 1998, from Morton Weiner (with
5 "loan" written on the memo line);
- 6 (2) a \$5,000 check dated August 5, 1998, from Frances Weiner (memo
7 line blank);
- 8 (3) a \$2,862 check dated August 5, 1998, from Frances Weiner (memo
9 line blank); and
- 10 (4) a \$7,138 check dated August 3 1998, which was drawn on an
11 investment account and payable to Frances Weiner (memo line blank).

12
13 MCU stated that it was unable to produce a copy of the \$5,000 deposit into the account
14 on September 2, 1998.¹⁰ It appears that the money from Morton Weiner and Frances
15 Weiner ("parents") comprised a substantial portion of the \$32,222 in the MCU account
16 when Anthony Weiner loaned \$28,000 to FOW. Thus, the \$28,000 loan did not represent
17 Anthony Weiner's personal funds but rather money provided by his parents, Morton
18 Weiner and Frances Weiner. Anthony Weiner's parents thus funded the loan and appear
19 to have made excessive contributions. *See* 2 U.S.C. § 441a(a)(1)(A). On financial
20 reports filed with the Commission, FOW reported the \$28,000 loan as an outstanding
21 debt to Anthony Weiner rather than an outstanding debt to his parents. *See, e.g.,* Friends
22 of Weiner October Quarterly, filed October 14, 1998.

23 In the interim audit report, FOW was asked to provide evidence demonstrating
24 that the contributions in question were not excessive. For example, FOW could have
25 demonstrated that the loan came from Anthony Weiners's personal funds by

¹⁰ In a conversation with a staff attorney from this Office on September 29, 2003, an officer of MCU explained that the microfilm with the \$5,000 deposit on it was unreadable and that there was no way to recover the missing records.

1 demonstrating that the amounts received from his parents were “gifts of a personal nature
2 which had been customarily received prior to candidacy.” *See* 11 C.F.R. § 110.10(b)(2).
3 FOW made no such showing. Instead, FOW essentially acknowledged that the funds for
4 the loan came from Anthony Weiner’s parents by stating that “the Candidate returned the
5 amount in question to his parents.” Attachment 1 at 7. To date, FOW and Anthony
6 Weiner have provided no information regarding the source of the \$5,000 deposit made
7 into Weiner’s account on September 2, 1998.¹¹

8 In light of the foregoing, this Office recommends that the Commission find reason
9 to believe that Morton Weiner and Frances Weiner violated 2 U.S.C. § 441a(a)(1)(A) by
10 making excessive contributions to FOW. This Office further recommends that the
11 Commission find reason to believe that FOW and Ira Spodek, as treasurer, violated
12 2 U.S.C. § 441a(f) by accepting the excessive contributions from Morton Weiner and
13 Frances Weiner and violated 2 U.S.C. § 434(b) by misreporting the contributions from
14 Anthony Weiner’s parents as a loan from Anthony Weiner and by failing to accurately
15 report the outstanding debt owed to Anthony Weiner’s parents. This Office also
16 recommends that the Commission find reason to believe that Rep. Anthony D. Weiner
17 violated 2 U.S.C. § 441a(f) by accepting, on behalf of FOW, the excessive contributions
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¹¹ This deposit does not appear to consist of Anthony Weiner’s salary because that is reflected by the bi-weekly payroll deposits from the City of New York. It does not appear to have been transferred from another account owned by Anthony Weiner, because his counsel has informed this Office that he had no other accounts at the time. Finally, it does not appear that it came from the sale of personal assets, because there is no indication that Anthony Weiner had or sold any such assets. This Office is, however, unable to determine the payor on the check because the financial institution at which it was deposited cannot retrieve a copy. *See supra* footnote 9.

1 from Morton Weiner and Frances Weiner.¹² Because the audit could not determine th
2 source of the \$5,000 deposit and because this transaction is barred by the statute of
3 limitations for civil penalty purposes, this Office does not recommend that the
4 Commission pursue the matter of the \$5,000 deposit.

5 **III. CONCILIATION AND CIVIL PENALTIES**

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This Office does not

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recommend conciliation with Anthony Weiner, Morton Weiner, or Frances Weiner at this

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time. Their only liability rests on the time-barred excessive loans.

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19 **IV. RECOMMENDATIONS**

- 20 1. Open a MUR in AR 03-05;
- 21 2. Find reason to believe that Friends of Weiner and Ira Spodek, as treasurer,
22 violated 2 U.S.C. §§ 434(a)(6), 434(b), and 441a(f), enter into pre-probable
23 cause conciliation with Friends of Weiner and Ira Spodek, as treasurer, and
24 approve the attached conciliation agreement;
- 25 3. Find reason to believe that Morton Weiner violated 2 U.S.C. § 441a(a)(1)(A);

- 1 4. Find reason to believe that Frances Weiner violated 2 U.S.C. § 441a(a)(1)(A);
2 5. Find reason to believe that Rep. Anthony D. Weiner violated 2 U.S.C.
3 § 441a(f);
4 6. Find reason to believe that Sari Kassin, Maya Cohen, Marty Hollander,
5 Zachary Kerr, John Lerner, Jitendra Mehta, Lewis Pell, and Leonard Schwartz
6 violated 2 U.S.C. § 441a(a)(1)(A), but take no further action and close the file
7 as to these respondents;
8 7. Find reason to believe that Abraham Chehebar violated 2 U.S.C.
9 § 441a(a)(1)(A) and enter into pre-probable cause conciliation with
10 Mr. Chehebar, and approve the attached conciliation agreement;
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14 9. Approve the appropriate Factual and Legal Analyses;
15 10. Approve the attached conciliation agreements; and
16 11. Approve the appropriate letters.

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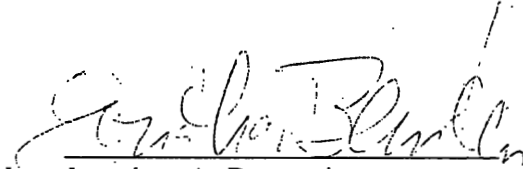
Lawrence H. Norton
General Counsel

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Associate General Counsel

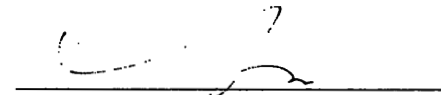
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2/19/04
Date

BY: 
Jonathan A. Bernstein
Assistant General Counsel

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Beth N. Mizuno
Attorney

1 Attachments:

- 2 1. Audit Referral Materials, Friends of Weiner
- 3 2. Proposed Conciliation Agreement (Friends of Weiner and Treasurer)
- 4 3. Proposed Conciliation Agreement (Abraham Chehebar)

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